In the High Court of Uttaranchal, at Nainital.

Chapter VIII, Rule 32(2) (b)
Description of case

Habeas Corpus Petition No. 11/2004(M/B)
Roshan Lal
Vs.
State of Uttaranchal & others

Date of decision: 18th November, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

ISB

In the High Court of Uttaranchal, at Nainital.

Habeas Corpus Writ Petition No. 11 of 2004 (M/B).

Roshan Lal S/o Moti Ram,
Through his son and next friend
Naval Kishore
R/o Village Shail Patel Devi,
Almora, District Almora ….. Petitioner.

Vs.

1- State of Uttaranchal,
2- Sessions Judge, Almora, District Almora,
3- Superintendent of Jail,
Almora, District Almora …… Respondents

Sri P.M.N. Singh, Senior Advocate assisted by Sri Vivek Shukla, learned counsel for petitioner.
Sri D.K.Sharma, learned G.A. for the respondents.

Coram: Hon'ble V.S. Sirpurkar, C.J.
Hon'ble Irshad Hussain, J.

Dated: 18-11-2004

Per: Hon'ble Mr. Justice Irshad Hussain, J.

This is a habeas corpus petition wherein the detention of the petitioner in Almora jail as an accused in case crime No. 2402/2004 under Sections 302, 307, 452 and 504 I.P.C. has been alleged to be illegal for want of valid remand either under Section 209 or 309 of the Code of Criminal Procedure (for short 'Code').

2- The petitioner Roshan Lal is the sole accused in S.T. No. 49/2002 which is at the last stage of its conclusion. The petitioner was committed to Court of Sessions by the C.J., Almora per order dated 9-12-2002 (Annexure-6) and the committal order reads as under:-

''न्यायालय मुख्य न्यायिक मजिस्ट्रेट, अल्मोडा
उपस्थितः सी0पी0 बिजलवान,
फौजदारी वाद सं0 1422/02
राज्य
बनाम्
रोषन लाल
अन्तर्गत धारा 302,307,452,504 भा0द0वि0
थाना कोतवाली अल्मोडा।

सुपुर्दगी आदेष

पुकार करायी गयी। अभियुक्त रोषन लाल जिला कारागार अल्मोडा से उपस्थित आया। अभियुक्त के विरूद्व अन्तर्गत धारा 302, 307, 452, 504, भा0द0वि0 के अन्तर्गत थाना कोतवाल अल्मोडा व्दारा आरोप–पत्र प्रेषित किया गया है।

अभियुक्त को धारा 207 द0प्र0संहिता के अन्तर्गत नकलें दी गयी जिसकी पुष्टि अभियु क्त के विद्वान अधिवक्ता व्दारा की गयी है। पत्रावली में कोई अन्य रिपोर्ट आनी षेष नहीं है जिसकी पुष्टि विद्वान सहायक अभियोजन अधिकारी व्दारा की गयी है।

चूँकि अपराध 302, 307 भा0द0 वि0 माननीय सत्र न्यायालय व्दारा परीक्षणीय अपराध है। इस कारण पत्रावली माननीय सत्र न्यायालय परीक्षण हेतु भेजी जानी आवष्यक है। अभियुक्त न्यायिक अभिरक्षा में जिला कारागार अल्मोडा में निरूद्ध है।

अभियुक्त दिनांक 23.12.2002 को सत्र न्यायालय के समक्ष उपस्थित हों इसकी सूचना डी.जी.सी. फौजदारी को तुरन्त दी जाय एवॅ माल मुकदमाती व कलेण्डर 7 दिन के अन्दर माननीय सत्र न्यायालय को प्रेषित किया जाय।

दिनांक 9.12.2002

ह0 सीपी0 बिजलवान,
मुख्य न्यायिक मजिस्ट्रेट अल्मोडा
9.12. 02''

3- Referring to the above committal order the learned counsel argued that since the learned C.J.M. while committing the petitioner to Court of Sessions has not remanded him to custody during and until the conclusion of the trial as contemplated under clause (b) of Section 209 of the "code" and since the learned Sessions Judge after taking cognizance of the offence against the petitioner found it necessary from time to time to postpone or adjourn the hearing of the sessions trial, the learned Sessions Judge was legally obliged to pass an order of remand of the petitioner is custody in conformity with the requirement of Section 309 of the "code', He also submitted that the record reveal that the learned Sessions Judge has not passed any order of remand as envisaged by the provision of Section 309 of the Code' and there being no valid remand in either of the above two provisions of the 'Code' the detention of the petitioner has altogether been illegal resulting which by a writ in the nature of habeas corpus the respondents are liable to be directed to forthwith release the petitioner

from Almora jail. Other points were also raised which are not germane to the decision f the petition and therefore it shall be proper to confine to the said submission on behalf of the petitioner.

4- In view of the submission made it is relevant to also reproduce the few orders passed by the learned Sessions Judge, Almora after the accused on being committed to Court of Session was produced there in connection with the proceedings of the sessions trial.

"(a)" न्यायालय सत्र न्यायाधीष अल्मोडा
सत्र परीक्षण 48/2002
सरकार
बनाम
रोषन लाल – अभियुक्त
17–12–02 आज मुख्य न्यायिक मजिस्ट्रेट अल्मोडा से सुपुर्दगी पत्र, कैलेण्डर मय अभिलेख के प्राप्त हुआ। पॅजीकृत हो।
पत्रावली दिनांक 23.12.02 को वास्ते उपस्थिति अभियुक्त पेष हो।
ह0 अस्पष्ट
प्र0 सत्र न्यायाधीषण अल्मोडा।''

"(b)"(23–12–02 मुकदमा पुराकर गया। अभियुक्त न्यायिक अभिरक्षा में हाजिर है। पीठासीन अधिकारी अवकाष में है।
पत्रवाली दि0 6–1–03 वास्ते आरोप पेष हो।
ह0 अस्पष्ट
प्र0 सत्र न्यायाधीष, अल्मोडा।''

"(c)" 6–1–03 मुकदमा पुकारा गया। अभियुक्त न्यायिक अभिरक्षा में हाजिर है। पीठासीन अधिकारी अवकाष में हैं।
ह0 अस्पष्ट
प्र0 सत्र न्यायाधीष, अल्मोडा''

5- These are the orders reproduced as examples and the learned Sessions Judge passed subsequent orders on various dates in similar manner as is evident from the copies of the orders filed as Annexure No.3 to the rejoinder affidavit on behalf of the petitioner.

6- On the other hand learned G.A. urged that the detention of the petitioner is legal as the orders passed on various dates by the Presiding Officer fulfill the legal requirement of remand and therefore the petition lack merit and is liable to be dismissed.

7- Relevant part of Section 209 of the 'Code' runs as under:-

"209. commitment of case to Court of Sessions when offence is triable exclusively by it.- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall-

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) …….

(d) ……..

8- The above Section 209 of the 'Code' confers power upon a Magistrate to remand an accused to custody until the case has been committed to Court of Session and also until the conclusion of the trial. From perusal of the committal order dated 9-12-2002 as reproduced above it is evident that the learned C.J.M. continued to remand the accused to custody not only until the case has been committed to Court of Session but thereafter also while committing the case to Court of Sessions. The third paragraph of the committal order though do not contain the specific averment that the accused has been remanded to custody until the conclusion of the trial. Learned G.A. submitted that we can not lose sight of the fact that the learned C.J.M. while committing the accused to Court of Sessions also remanded him to custody which was naturally intended to be until the conclusion of the trial of the accused according to law and the said recital thus fulfill the requirement of clauses (a) and (b) of Section 209 of the "Code' as the accused stand remanded to custody until the accused was committed to Court of Sessions and thereafter also while he was committed to Court of Session, to stand trial.

9- Learned Senior counsel appearing on behalf of the petitioner however submitted that the order passed by the learned C.J.M. does

not conform to the requirement of clause (b) of Section 209 of the 'Code' and therefore by no reasoning it can be held that the learned C.J.M. while committing the accused to Court of Sessions remanded him to cost today during and until the conclusion of the trial. He further submitted that the accused while being committed to Court of Session was remanded to judicial custody for a term not exceeding 15 days as contemplated by the proviso to sub-section (2) of Section 309 of the "Code' and this was the reason that by the said order date of appearance of the accused before the Court of Sessions was fixed as 23-12-2002 i.e. on the 15th day of the said order and during which period of 15 days judicial remand was given by the said order. In view of the submission it is relevant to reproduce the Section 309 of the 'Code' which reads as below:-

> "309. Power to postpone or adjourn proceedings.-
>
> (1)……..
>
> (2)If the Court, after taking cognizance of the offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or recorded, postpone or adjourn the same on such term as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:
>
> Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:
>
> Provided further…….
>
> Provided also…….
>
> Explanation-1 ……
>
> Explanation -2 ……..

10- From perusal of the provisions to Section 209 and 309 of the 'Code' reproduce above, it is evident that a Magistrate is entitled to pass an order or remand of the accused to custody during and until the conclusion of the trial if the offence is exclusively triable by the Court of Session and further the Magistrate is entitled to pass an order of remand of an accused person to custody under Section 309 of the "Code' for a term not exceeding 15 days at a time. In the order

dated 9-12-2002 the learned C.J.M. has not specifically used the words 'during and until the conclusion of the while committing the accused to Court of Session but merely passed an order or remand of 15 days which indicate that the order was not passed as contemplated by the provision of clause (b) of Section 209 of the 'Code'. Therefore the submission of the learned senior counsel for the petitioner is correct that the learned C.J.M. while committing the accused to Court of Session did not remand the accused to judicial custody during and until the conclusion of the t5rial and consequently the learned Sessions Judge while taking cognizance was required to remand the accused in custody by a warrant as and when on commencement of the trial it was found necessary or advisable to adjourn the proceedings as envisaged by sub-section (2) of Section 309 of the 'Code'. We have therefore to see as to whether in this case the requirement of the said provision has been made or not and the remand of the accused to judicial custody has been proper and legal.

11- The orders passed by the learned Sessions Jude after taking cognizance have been reproduced above as examples and the subsequent orders on various dates were also passed in the similar manner whereby the next date in the trial was given and it was also mentioned that the accused was being produced in judicial custody. The learned senior counsel on behalf of the petitioner termed the orders passed by the learned Sessions Judge as not in consonance with the requirement of sub-section (2) of Section 309 of the 'Code' as according to him the learned Sessions Judge had never passed any order to the effect that the accused facing trial is being remanded to judicial custody The submission made by the learned G.A. was that the tone and tenor of the every order passed by the learned Sessions Judge as and when the sessions trial was adjourned for hearing coupled with the preparation of the jail warrant duly singed by the Sessions Judge on various dates make it obvious that the compliance of the above provision has been made and the learned Sessions Judge remanded the accused to judicial custody from time to time as and when the orders were passed in the case. He also urged that though the jail warrants have not been prepared on prescribed proforma but still

the same were prepared on plain sheet of paper and were signed by the learned Sessions Judge on every date when the trial was adjourned and the accused was sent to jail in judicial custody with the direction to be produced on the next date of hearing also duly endorsed on the warrant in conformity with the date mentioned in the order passed by Sessions Judge on the record of the sessions trial and that the exercise so undertaken fulfill the above legal requirement and that the detention of the accused in jail under judicial custody has altogether been proper and legal. Having considered the orders passed by the learned Sessions Judge on various dates coupled with the warrant prepared and duly signed (part of which has been produced in original), we are of the firm view that the submissions of the learned G.A. have legal force and rebut the submissions made on behalf of the petitioner and we accordingly hold that the accused-petitioner has been remanded to judicial custody by the learned Sessions Judge in a proper and legal manner as and when it had been found necessary to adjourn the hearing in the sessions trial and that the custody of the petitioner being proper and legal the present habeas corpus petition is liable to be dismissed.

12- The reasons are that the orders passed by the learned Sessions Judge from time to fulfill the requirement of sub-section (2) of Section 309 of the "Code' in as much as the learned Sessions Judge has on every date passed an order of remand and jail warrant was duly signed wherein the next date of the production of the accused before the Court has been duly mentioned in conformity with the orders passed by the learned Sessions Judge on the record of the session trial. In the face of the facts of the case the Division Bench decision of the Allahabad High Court (Lucknow Bench) in the matter of Vashist Muni vs. Superintendent of District Jail Faizabad and others; (1993) U.P. Cr. R. 159 pressed into service by the learned senior counsel for the petitioner can not be applied here. In the reported case the warrant of remand authorizing the Superintendent of Jail to detain the petitioner in custody during the course of entire inquiry till its conclusion was not held to be a valid warrant of remand under Section 309 of the "code' in view of the order passed by the Presiding Officer not containing a direction of remand for judicial custody till the next

date fixed in the order sheet while adjourning the case from one date till another date. The tone and tenor of the orders passed by the learned Sessions Judge from time to time on various dates authorizing the detention on the warrant sent to the jail clearly imply that a valid order of remand for judicial custody was made and warrant was sent to the jail accordingly.

13- The jail warrants as prepared on the plain paper sheet were also made subject of criticism by the learned senior counsel for the petitioner. It will suffice to mention here that preparation of warrant on ordinary piece of paper was not found to be illegal by the Allahabad High Court (Lucknow Bench) in the case of Uma Kant vs. State of U.P; 1982 Criminal law Journal, 1836 and the contention of illegal detention of the accused was rejected. The reported decision also rebut the argument advanced in the case against the jail warrant and we do not hesitate to reiterate that the orders passed by the learned Sessions Judge from time to time coupled with the jail warrant duly signed as and when the accused was sent to judicial custody in jail clearly indicate that the detention has altogether been legal and proper.

14- Even otherwise a Full Bench of the Allahabad High Court in the case of Urroj Abbas vs. State of U.P.; 1973 Criminal Law Journal 1458 (Alld.) laid down that the statutory requirement of a separate order in writing with reasons therefore was only in respect of the postponement or adjournment of the inquiry or trial and not in respect of remanding the accused to judicial custody for which mere issue of warrant of remand was sufficient. Considering the principle laid down in the said case we see no merit whatsoever in the submission on behalf of the learned senior counsel for the petitioner.

15- In the peculiar facts of the case we do not find it desirable to refer to other decisions cited at the bar and also the other grounds not relevant for disposal of the habeas corpus petition and in view of the reasons aforesaid the petition is liable to be dismissed.

16- The habeas corpus petition is dismissed. No order as to costs.

(Irshad Hussain, J.) **(V.S. Sirpurkar, C.J.)**

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